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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 CLINTON HECK,

9 Plaintiff,

10 v.

11 BRUCE GAGE, et al.,

12 Defendants.

Case No. C11-5539BHS

ORDER ADOPTING REPORT
AND RECOMMENDATION

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14 This matter comes before the Court on the Report and Recommendation (“R&R”) of
15 the Honorable J. Richard Creatura, United States Magistrate Judge (Dkt. 53) and Plaintiff
16 Clinton Heck’s (“Heck”) objections to the R&R (Dkt. 54).

17 On March 6, 2012, Judge Creatura issued the R&R recommending that the Court
18 grant Defendants’ motion to dismiss because (1) Heck’s claims were unexhausted and (2)
19 Defendants are entitled to qualified immunity. Dkt. 53. On March 13, 2012, Heck filed
20 objections arguing that his claims were exhausted through the prison grievance system and
21 that the defense of qualified immunity is not applicable to his claim for declaratory and
22 injunctive relief. Dkt. 54.

23 With regard to the issue of exhaustion, Heck’s objections are without merit. Heck
24 essentially reiterates his arguments that were raised in his response to Defendants’ motion to
25 dismiss. The basic argument is that, although Heck did not exhaust the grievance that names
26 the Defendants in this action, Heck did exhaust a grievance that named a different
27 individual. *Compare* Dkt. 45 at 2–3 *with* Dkt. 54 at 3–6. Whether a previous grievance was


1 properly exhausted is a wholly separate issue from whether the grievance that gives rise to
2 the current claim was properly exhausted. Heck admits that he did not exhaust the grievance
3 that names the Defendants in this action. Therefore, Heck's objection to Judge Creatura's
4 recommendation is without merit.

5 With regard to the qualified immunity issue, the Court need not reach this issue
6 because Heck's claims are unexhausted.

7 The Court having considered the R&R, Plaintiff's objections, and the remaining
8 record, does hereby find and order as follows:

- 9 (1) The R&R is **ADOPTED** on the issue of exhaustion; and
10 (2) This action is **DISMISSED without prejudice**.

11 DATED this 5th day of April, 2012.

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14 BENJAMIN H. SETTLE
15 United States District Judge
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